

BEFORE THE TENNESSEE STATE BOARD OF EQUALIZATION

IN RE: Eggo Company)
 Dist. 10, Map 166, Control Map 166, Parcel 16.01) Fayette County
 Industrial Property)
 Tax Year 2007)

INITIAL DECISION AND ORDER

Statement of the Case

The subject property is presently valued as follows:

<u>LAND VALUE</u>	<u>IMPROVEMENT VALUE</u>	<u>TOTAL VALUE</u>	<u>ASSESSMENT</u>
\$810,400	\$14,213,700	\$15,024,100	\$6,009,640

An appeal has been filed on behalf of the property owner with the State Board of Equalization. The undersigned administrative judge conducted a hearing in this matter on February 14, 2008 in Somerville, Tennessee. In attendance at the hearing were registered agent Will Brown, Mark Ward, Fayette County Assessor of Property, and M. Ray Weatherly, TMA, an appraiser with the Division of Property Assessments.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Subject property consists of an 81.04 acre site improved with a 473,145 square foot food processing and cold storage facility located one block north of State Route 57 on Morrison Street in Rossville, Tennessee. Subject facility was originally constructed in 1968. Modifications to the building include a freezer addition in 1992 and conversion of one of the three freezers to storage and/or processing.

The taxpayer contended that subject property should be valued at 7,500,000-\$8,500,000. In support of this position, the sales comparison and cost approaches were introduced into evidence. Mr. Brown placed primary emphasis on the cost approach due to the number of adjustments needed in the sales comparison approach and the difficulty in making those adjustments.

The assessor contended that subject property should be valued at \$12,300,000. In support of this position, the testimony and written analysis of Mr. Weatherly was offered into evidence. Like Mr. Brown, Mr. Weatherly also considered both the cost and sales comparison approaches. Unlike Mr. Brown, however, Mr. Weather placed greatest weight on the sales comparison approach. Mr. Weatherly essentially argued that the cost approach had significantly less probative value due to the age of the improvements and the difficulty in estimating accrued depreciation.

The basis of valuation as stated in Tennessee Code Annotated Section 67-5-601(a) is that "[t]he value of all property shall be ascertained from the evidence of its sound, intrinsic

and immediate value, for purposes of sale between a willing seller and a willing buyer without consideration of speculative values . . ."

General appraisal principles require that the market, cost and income approaches to value be used whenever possible. Appraisal Institute, *The Appraisal of Real Estate* at 50 and 62. (12th ed. 2001). However, certain approaches to value may be more meaningful than others with respect to a specific type of property and such is noted in the correlation of value indicators to determine the final value estimate. The value indicators must be judged in three categories: (1) the amount and reliability of the data collected in each approach; (2) the inherent strengths and weaknesses of each approach; and (3) the relevance of each approach to the subject of the appraisal. *Id.* at 597-603.

The value to be determined in the present case is market value. A generally accepted definition of market value for ad valorem tax purposes is that it is the most probable price expressed in terms of money that a property would bring if exposed for sale in the open market in an arm's length transaction between a willing seller and a willing buyer, both of whom are knowledgeable concerning all the uses to which it is adapted and for which it is capable of being used. *Id.* at 21-22.

After having reviewed all the evidence in the case, the administrative judge finds that the subject property should be valued at \$12,300,000 in accordance with Mr. Weatherly's analysis.

Since the taxpayer is appealing from the determination of the Fayette County Board of Equalization, the burden of proof in this matter falls on the taxpayer. *Big Fork Mining Company v. Tennessee Water Quality Control Board*, 620 S.W.2d 515 (Tenn. App. 1981).

The administrative judge finds that the sales comparison approach has greatest probative due to the age of subject property and the difficulty in measuring accrued depreciation. The administrative judge finds that the procedure typically utilized in the sales comparison approach has been summarized in one authoritative text as follows:

To apply the sales comparison approach, an appraiser follows a systematic procedure.

1. Research the competitive market for information on sales transactions, listings, and offers to purchase or sell involving properties that are similar to the subject property in terms of characteristics such as property type, date of sale, size, physical condition, location, and land use constraints. The goal is to find a set of comparable sales as similar as possible to the subject property.
2. Verify the information by confirming that the data obtained is factually accurate and that the transactions reflect arm's-length, market considerations. Verification may elicit additional information about the market.

3. Select relevant units of comparison (e.g., price per acre, price per square foot, price per front foot) and develop a comparative analysis for each unit. The goal here is to define and identify a unit of comparison that explains market behavior.
4. Look for differences between the comparable sale properties and the subject property using the elements of comparison. Then *adjust the price of each sale property to reflect how it differs from the subject property or eliminate that property as a comparable*. This step typically involves using the most comparable sale properties and then adjusting for any remaining differences.
5. Reconcile the various value indications produced from the analysis of comparables into a single value indication or a range of values.

[Emphasis supplied]

Appraisal Institute, *The Appraisal of Real Estate* at 422 (12th ed. 2001).

Respectfully, the administrative judge finds that Mr. Brown's sales comparison approach lacks probative value because the comparables were not adjusted. The administrative judge finds Mr. Brown testified on cross-examination that he did not adjust his comparables because he is not a licensed appraiser. Although the administrative judge appreciates Mr. Brown's candor, the administrative judge finds the fact remains that the taxpayer did not introduce a meaningful sales comparison approach into evidence.

The administrative judge finds that subject property cannot reliably be appraised by simply considering the cost approach as Mr. Brown has done for all practical purposes. The administrative judge finds that even if it is assumed *arguendo* that the cost approach has significant probative value, this would not eliminate the need to also consider a bona fide sales comparison approach in the reconciliation process.

Given the foregoing, the administrative judge would normally affirm the current appraisal of subject property based upon the presumption of correctness attaching to the decision of the Fayette County Board of Equalization. In this case, however, the administrative judge finds that Mr. Weatherly's analysis established the upper limit of value.

ORDER

It is therefore ORDERED that the following value and assessment be adopted for tax year 2007:

<u>LAND VALUE</u>	<u>IMPROVEMENT VALUE</u>	<u>TOTAL VALUE</u>	<u>ASSESSMENT</u>
\$810,400	\$11,489,600	\$12,300,000	\$4,920,000


It is FURTHER ORDERED that any applicable hearing costs be assessed pursuant to Tenn. Code Ann. § 67-5-1501(d) and State Board of Equalization Rule 0600-1-.17.

Pursuant to the Uniform Administrative Procedures Act, Tenn. Code Ann. §§ 4-5-301—325, Tenn. Code Ann. § 67-5-1501, and the Rules of Contested Case Procedure of the State Board of Equalization, the parties are advised of the following remedies:

1. A party may appeal this decision and order to the Assessment Appeals Commission pursuant to Tenn. Code Ann. § 67-5-1501 and Rule 0600-1-.12 of the Contested Case Procedures of the State Board of Equalization. Tennessee Code Annotated § 67-5-1501(c) provides that an appeal **“must be filed within thirty (30) days from the date the initial decision is sent.”** Rule 0600-1-.12 of the Contested Case Procedures of the State Board of Equalization provides that the appeal be filed with the Executive Secretary of the State Board and that the appeal **“identify the allegedly erroneous finding(s) of fact and/or conclusion(s) of law in the initial order”**; or
2. A party may petition for reconsideration of this decision and order pursuant to Tenn. Code Ann. § 4-5-317 within fifteen (15) days of the entry of the order. The petition for reconsideration must state the specific grounds upon which relief is requested. The filing of a petition for reconsideration is not a prerequisite for seeking administrative or judicial review; or
3. A party may petition for a stay of effectiveness of this decision and order pursuant to Tenn. Code Ann. § 4-5-316 within seven (7) days of the entry of the order.

This order does not become final until an official certificate is issued by the Assessment Appeals Commission. Official certificates are normally issued seventy-five (75) days after the entry of the initial decision and order if no party has appealed.

ENTERED this 3rd day of March, 2008.



MARK J. MINSKY
ADMINISTRATIVE JUDGE
TENNESSEE DEPARTMENT OF STATE
ADMINISTRATIVE PROCEDURES DIVISION

c: Mr. Will Brown
Mark Ward, Assessor of Property